IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : November 09, 2006

State of Haryana ....Appellant

versus

Balwinder Singh ....Respondent

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : Sidharath Batra, Assistant Advocate General, Haryana

Virender Singh, J.

Respondent Balwinder Singh has earned acquittal vide impugned judgment dated 6.1.2006 of learned Additional Sessions Judge, Hisar, in case FIR No. 544 dated 16.6.2001, Police Station Sadar Hisar, under Section 51 of the NDPS Act and 61 of the Excise Act. The co-accused of the respondent namely Jagir Singh was declared as a proclaimed offender.

State of Haryana has preferred the instant appeal against the

aforesaid judgment. An application bearing Criminal Misc. No. 450-MA of 2006 under section 378(3) of the Code of Criminal Procedure for grant of leave to appeal has also been filed.

In short, the case of the prosecution is that six box containing 12 bottles each (brand Officers Choice) and two box containing 12 bottles each (brand London Whisky) Indian Made Foreign Liquor were recovered from the house of the respondent and his co-accused on a raid conducted on a secret information. While checking the box containing liquor it was noticed that one of the boxes was also containing poppy straw in a polythene. It turned out to be 1 kg. On the basis of the ruqa, the present case was registered against the respondent.

We have heard Mr. Batra and with his assistance gone through the impugned judgment.

The learned trial court has not only dis-believed the case of the prosecution on the discrepancies in the statements of the witnesses but has also observed that the link evidence is not proved on account of defect in the affidavits. The delay in sending the sample of poppy straw to the FSL has also been taken seriously by the learned trial court. Non compliance of section 100 of Code of Criminal Procedure is also considered against the prosecution. Taking all these infirmities collectively, the learned trial court had taken the view that the prosecution has not been able to substantiate the charges against the respondent beyond all reasonable

shadow of doubt.

Mr. Batra has not been able to pin-point any infirmity in the impugned judgment which would call for our interference.

We also do not find any demonstrable perversity in the observation of the learned trial court on any count which would take us to take a contrary view than the one already taken. Consequently, finding no substance in the instant appeal, Criminal Misc. No. 450-MA of 2006 is dismissed.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

November 09, 2006
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